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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 18

M. J. PUFAHL, Receiver of the Austin National Bank of Chicago, Illinois, a Corporation,

Petitioner,

vs.

ESTATE OF ELVIRA J. PARKS, Deceased,

Respondent.

Brief for Respondent.

EMMETT J. McCARTHY,
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vs.

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Respondent.

Brief for Respondent.

I.

STATEMENT OF THE CASE.

We believe that the statement contained in petitioner's brief is adequate.

II.

QUESTIONS PRESENTED.

We believe the statement in petitioner's brief as to the questions presented is sufficient.

III.

SUMMARY OF ARGUMENT.

(A) The law of Illinois governs the enforcement of the instant claim, *unless it is inadequate for that purpose, or unless it thwarts or impedes such enforcement.*

(B) The law of Illinois is adequate for the enforcement of the instant claim, and does not discriminate against it.

(C) The instant claim is a "debt" or "demand" within the meaning of Section 70 of the Illinois Statute of Non-Claims.

(D) Consideration of points in petitioner's brief.

(E) Conclusion.

ARGUMENT.

A.

The law of Illinois governs the enforcement of the instant claim, unless it is inadequate for that purpose or unless it thwarts or impedes such enforcement.

The proposition above stated seems to us to be established conclusively by the two cases which were decided by this court on February 4, 1935, to wit:

Forrest v. *Jack,* 294 U. S. 158.
Seabury v. *Green,* 294 U. S. 165.

While these cases and the case of *Matteson* v. *Dent,* 176 U. S. 521, referred to therein, differ from one another in their facts, the common thread which runs through them all, is the proposition that the law of the state where the claim is sought to be enforced will control, unless it is inadequate or discriminatory. It is apparent, upon a study of these cases, that the laws of the states of Utah, Minnesota and South Carolina differ very greatly; in the cases arising under the laws of Minnesota and South Carolina, claimants were able to recover and in the case arising under the law of Utah, the claimant was not, but in all of the cases the law of the forum was applied, with no suggestion that the claims in question were entitled to other than the treatment afforded all claims of the same general class to which they belonged, whether arising under the Federal statute in question or otherwise.

In *Forrest* v. *Jack, supra,* the court in its opinion on page 163, says:

> "In the absence of Federal enactments relating to procedure for the enforcement of liability imposed by Section 66, collection is to be made in accordance with state laws governing claims against deceased persons, at least to the extent that such laws are not inconsistent with enforcement of the liability imposed by national authority. There is no suggestion that the laws of the State of Utah discriminate against or are inadequate for the just or convenient enforcement of the liability imposed against estates of deceased stockholders."

In *Seabury* v. *Green, supra,* the court, in its opinion on page 169 used the following language:

> "As suggested in *Forrest* v. *Jack, supra,* the enforcement of liability imposed by Section 66 may not be thwarted or impeded by state law."

It is apparent that no Federal enactments, implementing the act in question, were pointed out to the court in connection with the presentation of those cases. The point would seem to be established, therefore, beyond question, that if the State of Illinois has laws within the purview of which the collection of the instant claim would come, such laws control unless they are "inconsistent with enforcement of the liability imposed by national authority" or unless they tend to "thwart or impede" its enforcement. It seems to us that the following cases cited by petitioner in his brief support the same view, to wit:

> *Matteson* v. *Dent,* 176 U. S. 521 (cited on page 9 of petitioner's brief);

Drain v. *Stough*, 61 Fed. (2nd) 668 (cited on page 12 of petitioner's brief);
Mann v. *Kleisdorf*, 16 Fed. (2nd) 997 (cited on page 16 of petitioner's brief).

While we do not wish to be understood as agreeing with all the elements of the decisions in the last two of the cases above cited, we submit that in the *Drain* case the decision was based upon the law of the State of Washington, (see quotation from said case at the bottom of page 14 of petitioner's brief), and in the *Mann* case, upon the law of the State of Mississippi.

The quotation from the last mentioned case shown in italics at the top of page 18 of petitioner's brief, would seem to indicate that the court was specifically following the law of Mississippi in its decision.

B.

The law of Illinois is adequate for the enforcement of the instant claim, and does not discriminate against it.

We understand the opinions in the cases of *Forrest* v. *Jack* and *Seabury* v. *Green*, *supra*, to mean that claims arising under the Federal act in question, must be given fair treatment, that is, the same treatment afforded other claims of the same general class, arising under other than the act in question. At various points in petitioner's brief, it is suggested that the instant claim, for the reason that it is created by a Federal statute, is entitled to some kind of preferred treatment to which ordinary claims are not entitled. We believe this idea, which seems to have been entertained also by the courts deciding some of the older cases cited, was due primarily to the language used in the

opinion in the case of *Zimmerman* v. *Carpenter,* 84 Fed. 747, extensive quotations from which appear on pages 11 and 12 of petitioner's brief. The Court in that case very apparently proceeded on the theory that the claim was not "an ordinary claim," and also on the theory that the Federal statute created an equitable lien upon assets of decedents, which last theory we shall discuss more fully under point C of our argument. We do not understand that these theories are tenable since the *Forrest* v. *Jack* and *Seabury* v. *Green* cases were decided by this court.

In order for us to consider the adequacy of the Illinois law for the purpose of the enforcement of the instant claim, it will be necessary for us to consider what the Illinois law is, as to the enforcement of claims against estates of decedents, and also as to enforcement of contingent claims.

For the determination of the first point, we refer to Section 70 of the Illinois Administration Act, the pertinent portions of which are set forth in the appendix on page 31 of petitioner's brief.

The sixth sub-section of said Section 70 provides that all claims and demands of whatever class, not exhibited to the court within one (1) year from the granting of letters, shall be forever barred as to the property and estate of the deceased which has been inventoried or accounted for by the executor or administrator. It is our contention that the instant claim would fall within this classification, although more detailed discussion of that specific point is reserved to subdivision "C" of our argument.

Secondly, we call attention to the law of Illinois applicable to claims which remain contingent during the entire time allowed by law for presenting of claims against estates. It is conceded by both parties hereto that the instant claim was contingent until after the expiration of

one year following the issuance of letters testamentary in the estate of Elvira J. Park.

The law of Illinois as to the point is well stated in the leading case of *Union Trust Company* v. *Shoemaker,* 258 Ill. 564. We quote from the opinion of the court, commencing on page 570:

> "Walter Shoemaker's estate having been finally settled more than two years before the filing of this bill without any claim having been presented against his estate, plaintiff in error insists that the claim is barred by section 70 of the Administration act, except as to property not inventoried. That section, prior to its amendment in 1903, by its seventh clause, provided that all demands not exhibited within two years from the granting of letters should be barred except as to estate not inventoried or accounted for. Section 67 provides that a claim not due may be presented and allowed, with a proper rebate of interest. This section refers only to claims on which there is an absolute liability though the time of payment is postponed, but has no reference to claims dependent upon a contingency which may or may not ripen into a liability. The holder of a claim of the latter class is not a creditor of the estate under the statute and cannot have his claim allowed. If his claim remains contingent during the whole of the two years allowed for the exhibition of claims against the estate, he cannot participate in the distribution by the administrator unless he finds estate of the deceased not inventoried or accounted for. (*Stone* v. *Clarke,* 40 Ill. 411; *Dugger* v. *Oglesby,* 99 *id.* 405; *Snydacker* v. *Swan Land and Cattle Co.,* 154 *id.* 220; *Mackin* v. *Haven,* 187 *id.* 480; *Pearson* v. *McBean,* 231 *id.* 536.) That Shoemaker's liability on the bond was contingent is manifest, for there could be no breach

of the condition until judgment in the action, which was not until more than two years after distribution and settlement of the estate.

"It does not follow, however, because the claim may not share in the distribution by the administrator, that the holder is barred from pursuing the assets, real or personal, into the hands of the heirs, devisees or legatees. Such conclusion would follow if the claim had been of such a character that it could have been presented to and allowed against the administrator. The law having given a remedy in such case, it must be pursued. But the limitation established by section 70 of the statute is not a general limitation upon all remedies against the property of deceased persons. The Administration act is a specific act adopted for the particular purpose of facilitating the early settlement of the estates of deceased persons. (*Waughop* v. *Bartlett*, 165 Ill. 124.) Demands against such estates must be exhibited within two years from the grant of administration, but where the demand is of such a nature that it is during all of such period of two years merely a contingent liability and not a fixed obligation of the estate, it cannot be allowed or considered in the settlement of the estate by the administrator. This limitation, which has been reduced to one year by the amendment of 1903, does not, however, apply to actions against heirs, devisees or legatees to subject property of the estate received by them to the payment of contingent liabilities of the deceased. Such actions, if otherwise maintainable, are subject only to the general Statute of Limitations."

The court further points out the derivation of the remedy outlined in the previous quotation. We quote further from the same opinion on page 573:

> "Although no action at law lies, or ever did lie, against destributees of personal property, whether legatees or heirs, for a debt of the ancestor, the ancient remedy by a bill in equity for a discovery, if necessary, and an account of assets received applicable to the payment of the decedent's debts, still continues. This jurisdiction had its origin not only in the general authority over trustees and trusts, but in the imperfect and defective power of the ecclesiastical courts. It was sufficient that a debt existed against the estate of a decedent and that there was property which should be applied to its payment to justify the interposition of the court of equity, but where distribution had been made another creditor could not ask for a return of the money or a proportional part from the distributees if he had received notice of the proceedings or had been guilty of *laches* or unreasonable delay. (*Public Works* v. *Columbia College*, 17 Wall. 521.) No question can exist of the validity of the excuse for the failure of the defendant in error to present its claim to the administrator before distribution, or of the equity of the position that the legatee who is a volunteer should not retain the property of the estate while a creditor goes unpaid."

To the same effect are the following cases:

Stone v. *Clarke's, Admrs.*, 40 Ill. 411;
Mackin v. *Hoben*, 187 Ill. 480;
Pearson v. *McBean*, 231 Ill. 536;
Union Trust Co. v. *Shoemaker*, 258 Ill. 564:
Chicago Title & Trust Co. v. *Fine Arts Bldg.*, 288 Ill. 142;
Beebe v. *Kirkpatrick*, 321 Ill. 612.

The attorneys for petitioner are also correct in the statement contained on page 23 of their brief, to wit: that the principle stated in the above case of *Union Trust Company* v. *Shoemaker, supra,* is the law of Illinois, "even though there may remain in the hands of the executors or administrators undistributed inventoried assets of value sufficient to pay such claim." This principle of law is enunciated in the following cases:

Snydacker v. *Swan Land and Cattle Company,* 154 Ill. 220;
Pearson v. *McBean,* 231 Ill. 536;
Rassieur v. *Jenkins,* 170 Ill. 503;
Stone v. *Clarke's Administrators,* 40 Ill. 411;
Morse v. *Pacific Railway,* 191 Ill. 356.

In the case of *Pearson* v. *McBean* above cited, a contingent claim became absolute after the expiration of the period for filing claims against the estate and the executors had a sufficient amount of the estate in their hands, as executors, to pay the amount claimed to be due. The court said in its opinion, on page 540:

> "and the fact that the entire estate of McBean had not been distributed, but a sufficient amount thereof remained in the hands of his executors to satisfy appellant's claim at the time the suit was commenced does not affect the result, as the assignee in the *Rassieur* case and the executors in the *Morse* case * * * each had ample funds in their hands with which to satisfy claims which were held to be barred." *

It is apparent, therefore, that the claimant in this case has a perfectly clear legal right under the established law of Illinois above set forth to proceed against the beneficiaries under the will of Elvira J. Park for the collection of the claim in question, up to the full value of property

received or to be received by them under the will of said decedent.

We do not believe, therefore, that the law of Illinois can be said to be "inadequate for the enforcement of the instant claim," or that it "thwarts" or "impedes" its enforcement.

Much is made of the point in petitioner's brief (pages 18 and 26), that the Illinois law applicable to the collection of contingent claims might, in a possible situation, cause delay in the collection of claims, with the effect of hindering the closing of a national bank receivership. The contention is made with apparent seriousness that such a result would constitute the "discrimination" or "thwarting" specified in the cases of *Forrest* v. *Jack* and *Seabury* v. *Green, supra.*

In the first place, this contention is the creature of a very lively imagination; it reminds us of the farmer boy who erected a scare-crow so awe-inspiring and terrible that it nearly scared him to death when he happened on it at night. In the second place, we do not believe this court had any such purely incidental inconveniences in mind. Certainly, a case might be imagined, where a claimant might be delayed due to unusual circumstances, such as the inability to sell real estate owned by the decedent in a dead market. However, there are other sections of the Administration act of Illinois imposing definite obligations upon administrators or executors with reference to the prompt closing of estates. We refer to Sections 112 and 114, which are shown on pages 21 and 22 in the Appendix to this brief. It would seem to us that a reading of those provisions will demonstrate that ample machinery is provided for enforcing the prompt closing of estates in Illinois.

We think the kind of argument above referred to, comes from perhaps an unconscious conviction on the part of attorneys for petitioner, that any obligation arising under a United States statute is necessarily superior to any obligation arising under the law of a mere state. It was the settled law of this country, as we understand it, up to a fairly recent date and perhaps even at this time, that the laws of the national government and of the states are supreme, each in its own proper sphere, and that there is no question involved of the superiority of one over the other, except when one invades the proper sphere of the other.

C.

The instant claim is a "debt" or "demand" within the meaning of Section 70 of the Illinois Statute of Non-Claim.

The contention of petitioner's brief (pages 9, 11) seems to be that the instant claim is not one that comes within the purview of the Illinois Statute of Non-Claim; that the Federal act creates a kind of equitable lien upon the undistributed assets in the hands of the executors, and that although no provision is made for enforcement of same under the Federal act itself, it is the duty of the state court to exempt the claim from the operation of its Statute of Non-Claim and to work out some other procedure for its enforcement. In other words that Congress intended the liability created to be like the "Joker" in the old fashioned deck of cards—able to take any trick.

We presume that this contention is due partially to the somewhat puzzling language used in the Federal act: "the estate and funds in their hands shall be liable in like manner and to the same extent as the testator * * * would be if

living." In trying to arrive at the meaning of this language, let us inquire what would have been the liability of Elvira J. Park if she had been living at the time the assessment was made by the Comptroller?

We submit that she would have been liable in the same degree and in the same manner as she would have been liable upon a promissory note which stood past due. As a practical matter, it would have been necessary, in order to stop the running of the statutes of limitation, for the holder of such a promissory note to have reduced same to judgment before he could have obtained anything resembling a lien upon the property of the debtor. In the same manner it would have been necessary for this receiver to have reduced his claim against Mrs. Park to judgment if he wished to obtain any lien or stop the running of the statute of limitation. If he had not done so, the claim would have been barred ultimately by statutes of limitation or by the general theory of laches, or property of the stockholder applied in payment of other obligations.

How was the situation changed by the death of the stockholder? The Comptroller's assessment was in one sense a liability against the estate of the decedent as soon as it was made, but in order to make such liability effective, it was necessary that same be reduced to judgment, or, in other words, that the claim be filed in the Probate Court in which her estate was pending or if the time for presentation had already elapsed, to bring a bill in chancery to reach assets already distributed, or if he cared to do so, to wait until the closing of the estate and then to proceed against the distributees. In the same manner that the liability against the stockholder, when living, would have been subject to the limitations imposed on general claims of that nature against living persons by the law of the State of Illinois, so the claim against the estate is subject to the limitations

imposed by the laws of the State of Illinois relative to the enforcement of claims against estates of decedents. We believe that some of the cases give too much weight to the words of the act "the estates and funds in their hands shall be liable" and overlook the qualifying words immediately following "in like manner and to the same extent as the testator * * * would be if living. * * *"

It seems to us that the meaning of the Federal act is more logical and understandable when it is construed in the manner above set forth, than if it is construed as creating a sort of equitable lien. It is easier to believe that Congress, in enacting the law in question, had in mind the methods used in the various states for the handling and collection of claims against deceased estates instead of embarking upon a new and untried method of enforcement. It is true that the laws of the states differ as to the methods of presentations and proving of claims, but it is also a matter of common knowledge that the creditors of banks, in the vast majority of instances, live in the same jurisdictions as the stockholders in the same banks, and there is nothing strange whatsoever in the assumption that Congress intended that the laws applicable to the collection of claims for stock liability, should be the laws in common use in the jurisdictions in which both the creditors and the stockholders were resident.

It would also seem to us that had it been the intention of Congress to create a lien, it would have more definitely defined the lien so created and provided a method for its enforcement. As a matter of common sense, it is easy to see that any attempt along that line would be very hazardous, as it would put a very uncertain element in the settlement of estates and raise difficulties as to practical enforcement which would be almost insuperable.

It is apparent that the petitioner in this case did not proceed upon the supposition that he was entitled to any kind of lien. He filed his claim in the Probate Court of Cook County, Illinois in the manner provided by statute for filing claims. He was charged with the knowledge of the Illinois law applicable to contingent claims which have become absolute after the expiration of the time fixed for the filing of claims. It was only after the case had reached the Appellate Court that he presented the equitable lien theory.

It seems likely that the option of the court in *Zimmerman* v. *Carpenter,* 84 Fed. 747, *supra,* had much to do with the origin of the theories heretofore referred to, to wit: That the Federal statute created a lien, and second, that the claim was not an ordinary claim.

In this connection we believe it is incumbent upon us to carefully analyze the case of *Mortimer* v. *Potter,* 213 Ill. 178, which was largely based upon the *Zimmerman* case, *supra.* The *Mortimer* case is very much relied upon by the petitioner in his brief, and is also used as authority for the decisions rendered by Judge Lindley in the cases quoted at such length in petitioner's brief and in the Appendix thereto. Several statements are made in the opinion of the court in the *Mortimer* case which apparently support petitioner's contentions and which are much relied upon by him. We think however that the importance of these conclusions will be very seriously diminished upon a careful consideration of the case itself. The facts in the case were as follows:

One Charles Cavanagh owned 10 shares of the capital stock of the National Bank of Illinois. He died testate on April 1, 1873, leaving a will, by which he vested all his estate in two trustees, one of whom was his widow. She

was to receive the income of the entire trust during her lifetime, and to have the right to dispose of part of the corpus thereof by her will, the balance to go to certain specified legatees. The estate of said decedent was administered upon and settled in due course of administration about two years after his death. In 1896 the bank failed and in 1899 the Comptroller of the Currency ordered an assessment of 100% upon the stock. The widow died shortly after the assessment, leaving a will, disposing of the portion of the trust estate which she had been given the right to dispose of under her husband's will. After her death the surviving trustee, disregarding the assessment by the Comptroller which had been previously made, made complete distribution of the trust estate to the beneficiaries. The receiver of the insolvent bank then filed a bill in chancery to collect the assessment, making the surviving trustee and the persons to whom he had distributed the trust estate parties. The defendants relied principally upon two points, the first being that the bank stock had become the property of the widow; that the claim, therefore, should have been presented against her estate, and not having been presented, the same was barred. The other contention was that the claim was barred by the Statute of Non-Claim of the State of Illinois, because it had not been filed against the estate of the original stockholder who had died and whose estate had been settled twenty-five years prior to the accrual of the claim as an absolute liability.

The court held very properly that the first defense was ineffectual, for the reason that the widow had never become the owner of the stock, but was entitled only to receive dividends therefrom during her lifetime. As to the other defense, the court held that the claim could not have been presented against the estate of the original stock-

holder, because the estate had been closed prior to the accrual of the claim, stating, "the liability arose more than 20 years after the expiration of the two years within which claims could have been filed against it in the Probate Court."

The court then directed the entry of a judgment against all the defendants—"primarily against the trustee as such —secondarily against the legatees and distributees—ultimately against the trustee personally".

We believe that the decision of the court was correct based upon the law of the State of Illinois as it existed at the time of the decision of the case and as it now exists. The established law as previously set forth in this brief was, that a claim remaining contingent during the period provided for the presentation of claims against the deceased's estate, was not barred as against distributees, and could be enforced against them to the value of their distributive shares received from the estate. See *Union Trust Company* v. *Shoemaker supra.* The surviving trustee in the above case was liable on two theories: First, as a distributee of the estate of the original stockholder, and secondly as the owner of the bank stock standing in his name. It is apparent that under the will of said deceased stockholder, title to the bank stock passed to the trustees and upon the death of one of the trustees to the survivor. It was, therefore, the duty of the trustee, both as a distributee of the estate and as a present holder of title to the stock, to satisfy the claim of the comptroller before parting with the trust assets in his hands. Holding the trust assets as a distributee, he was liable under the settled law to the full amount of property held by him as such trustee; holding title to the stock as an owner at the time the liability accrued, to-wit: when the comp-

troller's assessment was made, he was directly liable under the act as an owner. However, in the latter case he would not be protected by any statute of non-claim which would have been the case if he had held the stock as an executor. The laws of Illinois do not provide any procedure for the presentation of claims against trustees or regulate the time within which such claims must be presented.

Although the above decision is sustainable upon the above grounds, it is apparent that the court, to a considerable extent, rested its decision upon the case of *Zimmerman* v. *Carpenter, supra,* which has been previously discussed. The court at least gave lip service to the theories of equitable lien and uniqueness of claim enunciated in the *Zimmerman* case. Inasmuch, however, as that case purported to construe a Federal act, the ultimate construction of which is the duty of this court, we do not believe that the *Mortimer* case can be considered as controlling in any way. It is apparent that the court in that case did not have clearly in its mind, the law applicable to contingent claims, which was enunciated so clearly in the case of *Union Trust Company* v. *Shoemaker, supra.* Stripped of the features incident to its attempted construction of the Federal act, the court arrived at the correct conclusion, namely, that the assets in the hands of the distributees were liable to the claim.

The fact is stated on page 21 of petitioner's brief that *Mortimer* v. *Potter* case was cited with approval by the Supreme Court of Illinois in the case of *Kingston* v. *Old National Bank of Centralia,* 359 Ill. 192. From an examination of the last mentioned case it appears that the *Mortimer* case is cited on page 204 of the opinion, but as authority for a point not at issue in the instant case, to wit, that the liability imposed by the Wisconsin Statute sur-

vived the death of the stockholder and was enforceable against his executors.

It is also to be noted that in the *Mortimer* case, the receiver filed a bill in equity which was the appropriate method of reaching assets in the hands of distributees. In that kind of proceeding he was clearly entitled to relief to which he would not have been entitled in a proceeding against the estate of the deceased stockholder. The receiver in the instant case had his option, whether he would file a suit in equity to reach assets in the hands of distributees or file a claim against the estate in the Probate Court of Cook County. He should have been perfectly conversant with the fact that a claim in the Probate Court is bound by the statutory proceeding provided for the conduct of that court.

D.

Discussion of cases cited in petitioner's brief.

It is apparent that petitioner places great reliance upon the cases decided by Judge Lindley in the District Court of the United States for the Eastern District of Illinois, to wit: *William M. Below, Receiver,* v. *First National Bank of Danville* (decision not reported) and *G. B. Drake, Receiver* v. *Dilatush* (decision not reported), extensive quotations from which may be found on pages 15, 16, 23, 24 and 25 in petitioner's brief, and the opinions in which may be found *in extenso* in the appendix attached to petitioner's brief. The decisions in those cases were based largely on the theory that the claims did not come under the purview of the Illinois act of non-claim and also on the theory that the application of the Illinois law would have the effect of thwarting the enforcement of the claims involved. Inasmuch as we have considered such theories

exhaustively and presented, as we believe, conclusive answers to same, we shall not take the time of the court in further analyzing the reasons which Judge Lindley gave for his conclusions. He places great weight upon *Mortimer* v. *Potter, supra,* although it apparently did not occur to him to examine carefully the reasoning by which that court arrived at its conclusions.

CONCLUSION.

We believe that we have demonstrated that the opinion of the Appellate Court of Illinois was correct, and that same should be affirmed by the decision of this Court.

Respectfully submitted,

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APPENDIX.

Statutes Involved.

Section 64, Title 12, U. S. C. A.

The portion of the above statute is correctly set out in the Appendix to petitioner's brief.

Section 66, Title 12, U. S. C. A. provides:

> "Persons holding stock as executors, administrations, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust fund would be, if living and competent to act and hold the stock in his own name."

Section 70 of the Illinois Administration Act (Ch. 3, Par. 71, Section 70, Illinois Revised Statutes, 1935).

The portion of this statute as set out in the Appendix in the Petitioner's brief is correctly stated.

Section 112 of the Illinois Administration Act (Ch. 3, Par. 114, Illinois Revised Statutes, 1935), provides as follows:

> "Every executor and administrator shall exhibit a report of his administration to the County Court, from which the letters testamentary or of administration were obtained, within thirty days after the expiration

of one year after date of his letter, and thereafter, whenever required by the court, until the duties of administration are fully completed. At any time during the course of administration an executor or administrator may file a final report of his administration to a specified date, and in like manner from time to time file final reports to specified dates, but no such final report or final report at the conclusion of administration shall be approved by the court unless the heirs at law of the decedent, the legatees and/or devisees under the will and the creditors, if any, of the decedent, shall have been notified thereof in such manner as the court may have directed.

"In all cases where a hearing shall have been had in open court upon any final report of an executor or administrator upon notice as hereinbefore provided, all parties in interest shall be bound by the order of the court in relation to such report, in the absence of fraud, accident or mistake."

Section 114 of the Illinois Administration Act (Ch. 3, Par. 116, Illinois Revised Statutes, 1935), provides as follows:

"The County Courts of this State shall enforce the settlements of estates within the time prescribed by law, and upon the failure of an executor or administrator to make settlement within thirty days after the expiration of said time, the court shall order a citation to issue to the sheriff of the county where the executor or administrator resides, or may be found, requiring said executor or administrator to appear on a day within thirty days thereafter, to be designated in such citation and make settlement of the estate, or show cause why the same is not done; and if an execu-

tor or administrator fails to appear at the time required by such citation, the court shall order an attachment requiring the sheriff of the county where the executor or administrator resides, or may be found, to bring the body of said executor or administrator before the court and upon a failure of an administrator or executor to make settlement under the order of the court after having been so attached, he may be dealt with as for contempt, and shall be forthwith removed by the court, and some discreet person appointed in his stead; the costs of such citation or attachment to be paid by the delinquent executor or administrator, and the court shall enter a judgment therefor, and a fee bill may issue thereon. All moneys, bonds, notes and credits which any administrator or executor may have in his possession or control as property or assets of the estate, at a period of two years and six months from the date of his letters testamentary or of administration, shall bear interest, and the executor or administrator shall be charged interest thereon from said period at the rate of ten per cent, or after two years and six months from any subsequent time that he may have discovered and received the same, unless good cause is shown to the court why such should not be taxed."